

**El Mundo Corporation and Worldwide Management Corporation and Union de Periodistas y Artes Graficas y Ramas Anexas de Puerto Rico, Local 225, a/w The Newspaper Guild, AFL-CIO, CLC. Cases 24-CA-5714 and 24-CA-5761**

January 25, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND DEVANEY

On June 16, 1989, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent and the Charging Party each filed exceptions and supporting briefs, the General Counsel filed a brief in support of the judge's decision, cross-exceptions, and a supporting brief. The Respondent filed an answering brief to the Charging Party's exceptions, the General Counsel filed a brief in answer to the Respondent's exceptions, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,<sup>1</sup> findings,<sup>2</sup> and con-

clusions,<sup>3</sup> to modify the remedy,<sup>4</sup> and to adopt the recommended Order as modified.

1. In reaching his decision in this case, the judge struck the testimony of the Respondent's witnesses because substantial record evidence established that the witnesses, who had been sequestered pursuant to the rule set out in *Unga Painting Corp.*, 237 NLRB 1306 (1978), were nonetheless shown, often by the Respondent's attorneys, various portions of the transcripts of the testimony of both the General Counsel's and the Respondent's witnesses. We do not approve of the Respondent's showing sequestered witnesses the transcripts of other witnesses' testimony. Rather than strike the tainted testimony entirely, however, we believe the

<sup>3</sup>In sec. V.(B) of the decision, the judge found an 8(a)(5) violation based on the Respondent's refusal to honor agreements previously reached with the Union on September 10, 1987. We do not rely on the judge's analysis of this issue. We find that the Respondent violated Sec. 8(a)(5) by its refusal to recognize and bargain with the Union on December 22, 1987. We find, in agreement with the judge, that the Respondent was a successor and, as such, had an obligation to recognize and bargain with the Union and to reinstate the terms and conditions of employment that were in effect when El Mundo Inc. closed its operations on August 30, 1987. See *Love's Barbecue*, 245 NLRB 78 (1979), enfd. in pertinent part sub nom. *Kallman v. NLRB*, 640 F.2d 1094, 1102-1103 (9th Cir. 1981); *State Distributing Co.*, 282 NLRB 1048 (1987). This finding is consistent with the judge's Conclusions of Law.

In finding that employee Roberto Jusino's discharge violated Sec. 8(a)(3), the judge states that the General Counsel had the burden to prove that protected concerted activities were the motivating factor in the Respondent's decision to terminate Jusino, citing *Wright Line*, 251 NLRB 1083 (1983). The correct test under *Wright Line* is whether protected concerted activities were a motivating factor in the discharge. We find that the General Counsel established that protected concerted activities were a motivating factor in Jusino's discharge and the Respondent failed to rebut the General Counsel's prima facie case. Therefore, the discharge violated Sec. 8(a)(3).

The Respondent excepts to the judge's reliance on the Respondent's discriminatory hiring practices for his determination that, absent unfair labor practices, the Respondent would have hired a majority of the predecessor's employees and that, therefore, pursuant to *State Distributing Co.*, 282 NLRB 1048 (1987), the record supports a finding of work force continuity for purposes of successorship. In particular, the Respondent contends that the judge's use of the discriminatory hiring evidence is inconsistent with the Board's decision in *Kessel Foods*, 287 NLRB 426 (1987), enfd. 868 F.2d 881 (6th Cir. 1989), cert. denied 110 S.Ct. 76 (1989). We disagree. Here, unlike in *Kessel Foods*, there was evidence showing that the Respondent's agents made numerous statements to employees indicating that it would be futile for them to apply for jobs with the Respondent because of their previous union affiliation.

<sup>4</sup>The General Counsel and the Charging Party have excepted to the inadvertent omission of Angel Baez from the attachment to the Appendix. We find merit to the exceptions and shall revise the attachment to include the name "Angel Baez."

The judge states in the remedy portion of his decision that, "Reinstatement shall be made on the basis of seniority in a manner consistent with the Remedies provided in *State Distributing Co.*, 282 NLRB 1048 (1987), and *Service Operations Systems*, 272 NLRB 1033 (1984), and with the call back list prepared by Respondent on September 17, 1987." To avoid any confusion, we clarify that reinstatement shall be made first on the basis of the September 17, 1987 call-back list, even though some names on the list may deviate from seniority. After the call-back list is exhausted, reinstatement shall be made on the basis of seniority. Additionally, if there are an insufficient number of positions for those ordered reinstated, a preferential hiring list shall be maintained in order of seniority.

We find that backpay should run from November 9, 1987, the date Respondent began assembling its work force. The record establishes that the Respondent had devised a discriminatory hiring scheme prior to November 9, 1987, and that it was used in hiring employees beginning on November 9, 1987.

Finally, we agree with the judge that a broad cease-and-desist order is necessary because the Respondent has demonstrated a "general disregard for [its] employees fundamental statutory rights." *Hickmott Foods*, 242 NLRB 1357 (1979).

<sup>1</sup>The Respondent excepts to the judge's taking official notice of the United States district court's factual findings in the related 10(j) proceeding. We find no merit in the Respondent's exception because it mischaracterizes the judge's action. The Respondent correctly argues that a court order issued under Sec. 10(j) of the Act establishes only that there is "reasonable cause to believe" that violations have been committed. The judge here did not, however, rely on the district court findings as a substitute for consideration of evidence in this record. Rather he treated them as a convenient listing of relevant factual allegations; and he determined that they were either stipulated to by the parties in this proceeding or otherwise not contested by the Respondent and that they were consistent with all the evidence in the proceeding.

<sup>2</sup>The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We also find without merit the Respondent's allegations of bias and prejudice on the part of the judge. After full consideration of the record and the judge's decision, we perceive no evidence that the judge made prejudicial rulings or demonstrated bias against the Respondent. No party has excepted to the judge's finding that the subcontracting of distribution work in the circulation department was a mandatory subject of bargaining.

better course here is to scrutinize the tainted testimony closely, mindful of that taint as a factor in determining credibility.

In scrutinizing that testimony, we accord our usual deference to the judge's credibility determinations. Thus, while the judge ultimately struck the testimony of the Respondent's witnesses, he also made numerous independent determinations of the credibility of the Respondent's witnesses' testimony. We rely on the judge's findings discrediting such testimony in reaching our decision. Further, we stress that the judge found the testimony of the General Counsel's witnesses to be "independently persuasive and corroborative and inherently more credible than the contradictory denials and explanations offered in the stricken testimony of the Respondent's witnesses." The judge stated in this regard (*supra* at 367):

[T]he General Counsel's non-hostile witnesses testified in a forthright and credible manner, whereas the testimony of the Respondent's several witnesses displayed evasiveness, contradictions, evidence of unreliability, and especially in the testimony of Sostre and Negron, the probability of collusion between them.

The judge also found that "The testimony of the vast majority of the Respondent's direct witnesses is tainted by inherent untrustworthiness as a result of the clear and repetitious violations of the sequestration order" (*supra* at 358) and that the "likelihood that such testimony is unreliable is so substantial that it equates to a showing that General Counsel and the Charging Party have been prejudiced . . . ."

Based on the judge's findings as to the credibility of witnesses, and our own independent review of the testimony, we find that the Respondent's witnesses were not credible and that the General Counsel's witnesses were independently persuasive.

2. The General Counsel contends that a visitatorial clause is necessary in this case. The General Counsel asserts that because the Respondent reduced the wages and benefits of all of its employees and modified or eliminated all the terms and conditions of employment of its employees, the task of gathering evidence to resolve these issues will be substantial and complex, thus necessitating expanded access to certain documents. The General Counsel also contends the visitatorial clause is necessary to ensure the Respondent's cooperation, because the Respondent has demonstrated a propensity to renege on agreements and may well seek to evade compliance. In addition, the General Counsel argues that a visitatorial clause is needed in particular to aid in the determination of backpay owed as a result of the Respondent's subcontracting of certain circulation department work. The General Counsel points out that there have been at least 117 such subcontractors.

The judge denied the General Counsel's request because he concluded, based on the Respondent's conduct after the issuance of the order in the 10(j) injunctive proceeding, that it was not continuing in its pattern of evasion.

As the Board did in *299 Lincoln Street, Inc.*, 292 NLRB 172 at 175 (1988), we decline to grant a broad visitatorial clause like that at issue in *Cherokee Marine Terminal*, 287 NLRB 1080 (1988); but we find a reasonable basis for granting a more limited one, tailored to the facts of the particular case. In particular, we find it warranted to require the Respondent to preserve and furnish on request records pertaining to the subcontracting of circulation department work, because those will be needed to determine the backpay of discriminatees affected by that subcontracting. We shall modify the recommended Order accordingly.

We also shall modify the recommended Order to provide that copies of the notice shall be mailed to all persons listed on the attachment to the appendix at their last known address.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, El Mundo Corporation, Hato Rey, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

### 1. Substitute the following for paragraph 2(c).

"(c) On request of the above Union, retroactively restore the terms and conditions of employment that existed immediately before it purchased the El Mundo Corp. operations, including wage rates and benefits that would have been paid absent unlawful changes from December 22, 1987, until it negotiates in good faith with the Union to agreement or to impasse; this also includes rescission of the unilateral subcontracting of unit work in the circulation department including reinstatement of the work previously performed by the district managers, district managers leadpersons, collectors, district coordinators, prepaid subscription clerk, newspaper distribution schedule clerk, and complaint mail subscription clerk. The remission of wages shall be computed as prescribed in *Ogle Protection Services*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall remit all payments it owes to the employee benefit funds and reimburse its employees in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), for any expenses resulting from the Respondent's failure to make these payments. Any amounts that the Respondent must pay into the benefit funds shall be de-

terminated in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).”

2. Substitute the following for paragraph 2(f).

“(f) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, timecards, personnel records, reports and other documents necessary to analyze Respondent’s compliance with the employment offer provisions and the amount of backpay due under the terms of this decision. Additionally, preserve and, on request, make available to the Board or its agents for examination and copying all legal documents, correspondence, memoranda, pay records and any other records or documents relating to backpay for subcontractors performing circulation department work.”

3. Insert the following as paragraph 2(h) and reletter all subsequent paragraphs accordingly.

“(h) Mail a copy of the notice marked “Appendix” to all employees on the attachment to the appendix at their last known address. The notice shall be in both English and Spanish and shall be duly signed by the Respondent on forms provided by the Regional Director for Region 24.”

4. Substitute the following attachment for that of the administrative law judge.

#### Attachment

1. Abreu Martinez, Nestor
2. Acevedo Colon, Angel
3. Acevedo Nunez, Jaime
4. Adorno, Guillermo
5. Agosto Montanez, Angel M.
6. Agosto Morales, Tomas
7. Alamo Colon, Alejandro
8. Alers Roldan, Rafael
9. Alicea Ramos, Jose Luis
10. Alvarez, Hiram E.
11. Alvarez Aponte, Miguel
12. Alvarez Escalera, Jose
13. Alvarez Ramos, Hermenegildo
14. Alvarez Rodriguez, Angel
15. Ambert, Hector
16. Andino Pagan, Enrique
17. Angueira, Victor M.
18. Aponte Ocasio, Librado
19. Arana Liduvina
20. Arce Santiago, Luis
21. Arroyo, Miguel
22. Asencio Ramirez, Danny
23. Astacio Burgos, Gladys
24. Avila, Fernando
25. Aviles Ortiz, Angel
26. Ayala, Rafael
27. Baez Perez, Agustin
28. Bally Garcia, Rafael
29. Barreiras Torres, Rosario
30. Beardsley, Clarence
31. Bernard, Antonio
32. Berrios, Nelson
33. Betances Bonilla, Manuel
34. Boob Margaret
35. Borrás, Gloria
36. Bracetty, Jorge
37. Bultron Rosa, Ramon Amed
38. Buso Rodriguez, Lourdes M.
39. Caban Sanchez, Jaime A.
40. Cabanas Santiago, Ana M.
41. Cabrera Agustin
42. Cabrera, Alba Raquel
43. Cabrera, Carlos
44. Cabrera Rivera, Evelyn
45. Calderon Roman, Maria A.
46. Camareno Rivera, Felix
47. Campos Romero, Pedro
48. Cano Serrano, Rafael
49. Cantres, Ramon
50. Cao, Jose
51. Capacetti Carbonell, Julio A.
52. Capacetti Carbonell, Julio A.
53. Caraballo, Jorge Luis
54. Carrasquillo Conzalez, Rafael
55. Carrasquillo Sola, Roberto
56. Castro Basabe, Jose E.
57. Castro Estremera, Felix N.
58. Castro Velez, Alfredo
59. Ceden Morales, Angel M.
60. Cestau Ruiz, Luis
61. Colon Acosta, Jose E.
62. Colon Gonzalez, Jose
63. Colon Gonzalez, Manuel
64. Colon Rodriguez, Jose R.
65. Contreras Lozano, Nestor
66. Cordero Torres, Sonia I.
67. Cortes Jimenez Edwin
68. Cruz, Carlos
69. Cruz, Jose D.
70. Cruz Cortes, Isabel
71. Cruz Vazquez, Jose Antonio
72. Dalmau, Luis R.
73. Davila Cardona, Francisco
74. De Jesus Vazquez, Enrique
75. De Jesus Vazquez, Juan A.
76. De Leon Pedraza, Isabel
77. De Leon Vazquez, Miguel A.
78. Delgado Santana, Isieal
79. Diaz, Maria A.
80. Diaz Rosalie
81. Diaz Alcaide, Maritza
82. Diaz Lopez, Rafael
83. Diaz Mendez, Rafael
84. Diaz Rosado, Miguel A.
85. Diaz Santiago, Antonio
86. Droz, Ana Socorro
87. Espinosa Martinez, Luis

88. Esquerdo, Heriberto
89. Esteves Orriola, Arcelio
90. Estrada Ortega, Angel
91. Feliciano Tirado, Rafael
92. Felix Perez, Hector Luis
93. Fernandez, Jose Arturo
94. Fernandez Gonzalez, Erasmo
95. Ferrer, Melba
96. Figueroa, Maria D.
97. Figueroa Adorno, Victor
98. Figueroa Agosto, Jesus
99. Figueroa Lopez, Juan
100. Figueroa Nieves, Manuel
101. Figueroa Santiago, Jesus
102. Figueroa Torres, Jose Ivan
103. Flores Ojeda, Pedro
104. Fuentes Fuentes, Roman A.
105. Fuentes Ramos, Jorge
106. Galan Vargas, Julio
107. Garcia, Nestor
108. Garcia Cruz, Jose Manuel
109. Garcia de Gracia, Rafael
110. Garcia Fontanez, Francisco
111. Garcia Parrilla, Hugo Humberto
112. Garcia Santana, David
113. Garrastazu Torche, Arturo
114. Gaston Monsanto, Juan
115. Gatell Toro, Rafael
116. Gerena, Raul
117. Gomez Barrantes, Maria V.
118. Gonzalez, Damaso
119. Gonzalez, Vicente
120. Gonzalez Cordero, Juan I.
121. Gonzalez Cruz, Graciliano
122. Gonzalez Gruz, Luis
123. Gonzalez Gonzalez, Felix
124. Gonzalez Gonzalez, Ismael
125. Gonzalez Nolasco, Jose L.
126. Gonzalez Reyes, Alberto
127. Gonzalez Reyes, Obdulio
128. Gonzalez Rivera, Michael
129. Grande la Greta, Vincenzo
130. Guadalupe, Juan M.
131. Gutierrez Lopez, Jesus
132. Guzman Rivera, Francisco
133. Guzman Santiago, Ruben
134. Hernandez Flecha, Juan
135. Hernandez Melendez, Abraham
136. Hernandez Pereira, Jose R.
137. Hernandez Sanchez, Norberto
138. Hernandez Santana, Juan
139. Hernandez Solis, Juan R.
140. Hernandez Vazquez, Digna
141. Herrera Caban, Edwin
142. Hiraldo, Hector Antonio
143. Horta Acevedo, Jose Roberto
144. Irizarry Gonzalez, Miguel A.
145. Irizarry Pagan, Roberto
146. Jephth, Angel L.
147. Jimenez Colon, Juan
148. Jimenez Diaz, Pedro
149. Jimenez Resto, Gloria
150. Jimenez Rios, Juan B.
151. Jordan, Jose M.
152. Lara Figueroa, Hector
153. Lasalle Morales, Eduardo
154. Leon Quiles, Jorge
155. Lopez, Gumersindo
156. Lopez, Arbelo Luis A.
157. Lopez Henriquez, Wanda
158. Lopez Lopez, Hector E.
159. Lopez Molina, Pedro
160. Lopez Nieves, Jose
161. Lopez Santiago, Jose Rafael
162. Loudeluciano, Alina De
163. Lugo Soto, Luis A.
164. Maisonet Perez, Hector
165. Maldonado Perez, Fernando
166. Malespin Guerrero, Rafael
167. Mangual Budet, Francisco
168. Mangual Gerena, Eduardo
169. Marrero, Felicita
170. Marrero, Rafael
171. Marrero Molina, Ramon
172. Marrero Rivas, Carmelo
173. Martinez, Francisco
174. Martinez Aponte, Miguel
175. Martinez Perez, Luciano
176. Martinez Ramos, Jose Manuel
177. Medina Irizarry, Reinaldo
178. Medina Ponce, Juan
179. Mejias, Robert
180. Melecio Diaz, Joaquin
181. Melendez, Carmen Socorro
182. Melendez Melendez, Cristobal
183. Melendez Reyes, Edgardo
184. Mendez Crespo, Miguel Angel
185. Mendez Gonzalez, Armando
186. Mercado, Concepcion
187. Mercado Lisboa, Ramon
188. Millan Pabon, Carmen
189. Molina Otero, Luis G.
190. Molina Rosa, Antonio
191. Montalvo Alicea, Amado
192. Montalvo Montalvo, Antonio
193. Montanez Ortiz, Aurea E.
194. Montero Ramirez, Jorge L.
195. Montes Mendez, Exor
196. Morales, Felipe
197. Morales, Victor Manuel
198. Morales Lozada, Carpio
199. Melecio Diaz, Joaquin
200. Morales Mediavilla, Rafael
201. Morales Pereira, Edwin

202. Morales Vega, Natanel
203. Moreno Algarin, Guillermo
204. Moreno Arroyo, Carlos
205. Morgado San Inocencio, Jesus
206. Muniz Correa, Israel
207. Munoz Jimenez, Miguel
208. Muriel Pizarro, Angel L.
209. Narvaez de Ortiz, Delia
210. Negron Lopez, Jesus
211. Negron Ortiz, Jose Luis
212. Nieves, Miguel A.
213. Mogueira, Rafael
214. Noguet Irizarry, Pedro
215. Ocasio Martinez, Feliz
216. Ocasio Matos, Israel
217. Olaguibel Ramirez, Roberto
218. Oquendo Alejandro, Victor
219. Orengo Marti, Hector Luis
220. Ortiz, Jaime L.
221. Ortiz Figueroa, Reynaldo
222. Ortiz Garcia, Jorge L.
223. Ortiz Mercado, Nellie
224. Ortiz Otero, Bienvenido
225. Ortiz Santini, Irma V.
226. Ortiz Torres, Lydia
227. Ovalle Lunas, Cristobal
228. Oyola Rivera, Samuel
229. Pacheco Rodriguez, Nelson
230. Padilla, Edwin
231. Padilla Rivera, Anthony
232. Padilla Rivera, William
233. Pagan Ayala, Hector
234. Pastrana Rosa, Gilberto
235. Pena Arzuaga, Arturo
236. Perez Castro, Fedora
237. Perez Mamondi, Franklin A.
238. Perez Miranda, Melvin
239. Perez Oquendo, Jose A.
240. Perez Perez, Lydia
241. Perez Vizcarrondo, Orlando
242. Pietri Romero, Radames
243. Pina Ramos, Hector
244. Pinero Lauer, Efrain
245. Pinero Medina, Deliz
246. Pineiro Seda, Miguel A.
247. Ponce Cotto, Carlos
248. Quijano Vega, Jose A.
249. Quiles Diaz, Carmen
250. Quinones Baez, Alberto
251. Quinones Colon, Angel
252. Ramirez, Victor
253. Ramos, Edelmiro
254. Ramos de Alvarez, Andrea
255. Ramos de Alvarez, Andrea
256. Ramos Lopez, Juan R.
257. Romos Ortiz, Nestor
258. Ramos Rodriguez, Enrique
259. Ramos Rosa, Carlos
260. Ramos Rosado, Edgar
261. Reyes Fernandez, Jose Manuel
262. Rios Ibarra, Jaime
263. Rios Oliveras, Jose
264. Rivas Santiago, Hector
265. Rivas Santos, Juan
266. Rivera, Ana M.
267. Rivera, Angel Luis
268. Rivera, Eduardo
269. Rivera, Jose E.
270. Rivera, Jose Joaquin
271. Rivera, Luis
272. Rivera, Maria de L.
273. Rivera, Rafael
274. Rivera Aviles, Santiago
275. Rivera Castellano, Angel Luis
276. Rivera Cosme, Jorge
277. Rivera Corraliza, Pablo
278. Rivera Figueroa, Miguel A.
279. Rivera Flores, Rosario
280. Rivera Garcia, Luis
281. Rivera Marrero, Edgardo
282. Rivera Ortiz, Santos
283. Rivera Otero, Miguel
284. Rivera Rivera, Fernando Luis
285. Rivera Santiago, Carlos
286. Rivera Santiago, Hector L.
287. Rivera Santos, Ramon
288. Rivera Sierra, Wilfredo
289. Rivera Vargas, Adalberto
290. Rivera Vega, Ramon L.
291. Robinson Cox, Edwin
292. Robles, Blanca M.
293. Rodriguez, Dolores
294. Rodriguez, Edith V.
295. Rodriguez, Ramon
296. Rodriguez, Jose Israel
297. Rodriguez Alicea, Fidel
298. Rodriguez Baez, Francisco
299. Rodriguez Bello, Evelyn
300. Rodriguez Diaz, Ernesto
301. Rodriguez Millan, Jose A.
302. Rodriguez Miranda, Jose E.
303. Rodriguez Perez, Agustin
304. Rodriguez Perez, Elias
305. Rodriguez Ramos, Enrique A.
306. Rodriguez Santana, Israel
307. Rodriguez Vazquez, Luis
308. Roig Mejia, Salvador
309. Rojas Cummings, Arnaldo
310. Rojas Rodriguez, Luis
311. Rolon Rosa, Juan
312. Roman, Gloria
313. Roman Bonet, Anibal
314. Roman Medina, Pablo
315. Roman Mestry, Bonifacio

316. Roman Perez, David  
 317. Romero Arrocho, Julio J.  
 318. Romero Cuevas, Luis  
 319. Romero Melecio, Victor  
 320. Saez Caraballo, Francisco  
 321. Saldana Puente, Annie  
 322. Salas Lopez, Eduardo  
 323. Salgado, Mariano  
 324. Sanchez, Jose Luis  
 325. Sanchez, Juan Ramon  
 326. Sanchez Albert, Francisco  
 327. Sanchez Cartagena, Domingo  
 328. Sanchez Concepcion, Margarita  
 329. Sanchez Dieppa, Jose Raul  
 330. Sanchez Guzman, Juan  
 331. Sanchez Puchales, Anibal  
 332. Sanchez Quinones, Ivan  
 333. Santaella Soto, Leoncio  
 334. Santana Natos, Pedro R.  
 335. Santiago, Gladys E.  
 336. Santiago, Hipolito  
 337. Santiago, Jesus M.  
 338. Santiago, Miguel  
 339. Santiago, Ruben  
 340. Santiago, Victor Luis  
 341. Santiago Irizarry, Miguel  
 342. Santiago Martinez, Gilberto  
 343. Santiago Rodriguez, Hector  
 344. Santiago Rodriguez, Jose E.  
 345. Santiago Rodriguez, Victor  
 346. Santiago Soto, Salvador  
 347. Santiago Vidal, Migdalia  
 348. Santos Cintron, Pablo  
 349. Santos Negron, Samuel  
 350. Santos Ramos, Hector  
 351. Santos Santiago, Luis Alexis  
 352. Serrano, Carlos  
 353. Silva, Claudio  
 354. Sola Gomez, Jose  
 355. Solano Correa, Amalia  
 356. Soto Aquino, Wilfredo  
 357. Soto Rolon, Rosario  
 358. Soto Santiago, Francisco  
 359. Tirado Negron, Fortunato  
 360. Torres, Luis A.  
 361. Torres, Ruben Dario  
 362. Torres Anaya, Osvaldo  
 363. Torres Curz, Domingo  
 364. Torres Droz, Edelmiro  
 365. Torres Fernandez, Victor M.  
 366. Torres Gonzalez, Juan  
 367. Torres Lora, Eddie  
 368. Torres Lugo, Hector  
 369. Torres Maldonado, Max  
 370. Torres Medina, Nestor  
 371. Torres Mendez, Francisco  
 372. Torres Montalvo, Zulma

373. Torres Ortiz, Victor  
 374. Torres Ramos, Victor M.  
 375. Torres Reyes, Nelson  
 376. Torres Soto, Israel  
 377. Toro Vazquez, Jesus  
 378. Tricoche Rivera, Jose  
 379. Vaello, Ramon F.  
 380. Valentin Castro, Carlos F.  
 381. Valentin Castillo, Carlos F.  
 382. Valentin Medina, Enrique  
 383. Vargas, Efrain  
 384. Vargas Badillo, Jose E.  
 385. Vargas Lopez, Milton David  
 386. Vargas Sales, Adolfo  
 387. Vargas Valentin, Angel Luis  
 388. Vazquez, Jose Ramon  
 389. Vazquez Diaz, Ramon  
 390. Vazquez Goden, William  
 391. Vega Agosto, Ruben  
 392. Vega Sierra, Raul  
 393. Velazquez Diaz, Tomas  
 394. Velazquez Ortiz, Daniel  
 395. Velez Aleman, Carlos Juan  
 396. Velez Pena, Ramon  
 397. Velez Reyes, Rogel  
 398. Velez Santiago, Haydee  
 399. Vigo Zenon, Juan A.  
 400. Vilella Diaz, Jose Javier  
 401. Villahermosa, Astroberto  
 402. Villanueva Maldonado, Angel  
 403. Villodas Rivera, Teofilo  
 404. Zapata Torres, Norman

*Antonio F. Santos, Esq. and Raymond E. Morales, Esq., for the General Counsel.*

*Miguel A. Palou, Esq. and Yolanda Toyos, Esq., of Hato Rey, Puerto Rico, for the Respondent.*

*Ginoris Vizcarra DeLopez-Lay Esq., of Santurce, Puerto Rico, for the Charging Party.*

*Tristan Reyes-Gilestra, Esq., of San Juan, Puerto Rico, for Fundacion Angel Ramos, Inc.*

## DECISION

### STATEMENT OF THE CASE

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Hato Rey, Puerto Rico, on August 1 and 3, 9–12, 15–18, September 7–9, and 12–16, 1988. The proceeding is based on charges filed December 29, 1987,<sup>1</sup> and March 16, 1988, as subsequently amended, by Union de Periodistas y Artes Graficas y Ramas Anexas de Puerto Rico, Local 225, a/w The Newspaper Guild, AFL–CIO, CLC. The Regional Director's consolidated complaint dated April 29, 1987, as subsequently amended, alleges that Respondent, El Mundo Corporation (previously known as Worldwide Management Corporation), of Hato Rey, Puerto Rico, is a successor of El Mundo, Inc. and that it violated Section 8(a)(1) of

<sup>1</sup> All following dates will be in 1987 unless otherwise indicated.

the Act by: instructing its employees to cease engaging in union activities and threatening its employees with unspecified reprisals if they engage in union activities; informing its employees that Respondent would not hire any former employees of Respondent's predecessor, El Mundo, Inc., or employees who were members or representatives of the Union; stating that it was limiting its hiring of employees represented by the Union; informing its employees that working nonunion was a condition of employment and conditioning the hiring of employees on their refraining from engaging in union activities; requesting its employees to recruit employees for hire who were not members of the Union; informing its employees that it would not reinstate those employees whom it had discharged because of their union activities; stating that it would prevent the Union from representing its employees; and interrogating employees about the employees' sympathies for the Union; that Respondent violated Section 8(a)(1) and (3) of the Act by refusing to consider for employment and to employ the employees who were previously employees of El Mundo, Inc., because those employees joined and supported the Union in order to avoid an obligation to recognize and bargain with the Union as the legal successor to El Mundo, Inc., and by discharging Roberto Jusino because he joined and supported the Union and engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and that Respondent violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union in good faith and by unilaterally modifying or eliminating the wages, benefits, and terms and conditions of employment.

Subsequent to an extension of the filing date, briefs were filed by the General Counsel, Respondent, and the Charging Party. On a review of the entire record in this case and from my observations of the witnesses and their demeanor, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Respondent is a Delaware corporation. It admits that at all times material it is and has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. PROCEDURAL MATTERS—VIOLATIONS OF THE SEQUESTRATION ORDER

In response to a request by the General Counsel, witnesses were sequestered pursuant to Rule 615 of the Federal Rules of Evidence, see *Unga Painting Corp.*, 237 NLRB 1306 (1978), and all potential witnesses left the court room with the exception of designated representatives, specifically Union Representative Angel Baez and Respondent's current personnel manager, William Cuevas.

The General Counsel concluded his presentation of direct witnesses on August 17 and the transcripts of their testimony were available to the parties when the hearing resumed on September 7. During cross-examination by the General Counsel, Respondent's witnesses (except Patricia Eaves and Jose A. Avila) testified that they had been given a copy of the transcript as part of their trial preparation in order to read

portions of the testimony of witnesses presented by the General Counsel.

The most revealing testimony in this regard was that of Circulation Manager Graciliano Sostre (who initially had been called as a hostile witness by the General Counsel). Sostre testified that Toyos, Respondent's co-counsel, provided him with the testimony of Roberto Jusino. He was also given the testimony of Subscription Manager Rafael Negron which had been given during a 10(j) proceeding at the United States District Court that was held between August 23 and 25. Sostre admitted discussing his testimony with Negron at the District Court. Sostre further admitted that he invited Negron to his office to discuss the testimony given by the witnesses, and to discuss their own testimony between themselves. After they finished, Sostre gave Negron a copy of the testimony given by Jusino and asked Negron to meet with Respondent's city manager, Angel Noriega, to discuss the testimony. Negron denied meeting with Noriega to show him the transcript of the testimony of Jusino and Negron; however, Sostre said that he saw both Negron and Noriega meet for that purpose at Negron's office and Negron admitted that Attorney Toyos gave him a copy of the transcript of the testimony of Jusino, Moreno, and Pablo Roman. Moreover, Negron admitted that he met on several occasions with both counselors Palou and Toyos to discuss Sostre's and Noriega's testimony and that during some of these meetings other witnesses for the Employer were present.

The record shows that either Attorney Palou or Toyos (or both) provided copies of the transcripts and participated in contemporaneous discussions with Respondent's witnesses and that witnesses read the testimony of other witnesses, and discussed it amongst themselves. Specifically, Production Manager Orlando Santos Leon testified that Attorneys Palou and Toyos showed him the transcript of the testimony of several witnesses who already had testified. Editor Luis Villares testified that he was shown by counsel the testimony of two witnesses that had previously testified at the hearing. Cesar Rodriguez testified that Respondent's attorneys gave him a copy of the testimony to read of a witness who had previously testified at the hearing, and had mentioned his name. Also, Chief of Photography Eduardo Figueroa admitted meeting with counsel and being shown the transcript testimony of a prior witness as did Jose Ivan Aldea and Luis Villares.

Orlando Santos and Cesar Rodriguez were shown transcripts of other witnesses and met with Attorneys Palou and Toyos, respectively, prior to testifying. Rodriguez is Respondent's computer supervisor, who reports to Jose Avila, the MIS Manager. Avila and Advertisement Department Head Patricia Eaves both denied that they were given a copy of the transcript to read, however, I agree with the General Counsel's contention that in light of Respondent counsel's meticulous habit of showing the transcript to his witnesses, it is highly improbable that he would not have shown the transcript to these two persons. These witnesses otherwise admit to meeting with counsel as well as with Personnel Director Cuevas, who was present during most of the earlier testimony, and, accordingly, I do not credit their denials regarding their awareness of the testimony of other witnesses.

Respondent contends that the parameters of the sequestration order, as applicable to the Respondent, were not defined in such a way as to prohibit the reading of transcripts by po-

tential witnesses. It also argues that the General Counsel has made no showing of prejudice and that, accordingly, the exclusion or disallowance of a witness testimony is not warranted. It also argues that the evidence presented by Respondent as it pertains to the portions of the transcript made available to his witnesses related to matters involving, for the most part, the rebuttal of the testimony presented by General Counsel's witnesses. It then contends that rebuttal witnesses do not fall within the sequestration rule, citing *Hughes v. State*, 148 S.W. 543, and *U.S. v. Hall*, 653 F.2d 1002, 1006 (1981).

First, I find that the evidence subject to the General Counsel's motion is not rebuttal evidence but direct evidence of the Respondent's case in chief. Moreover, the *Hall* case cited by Respondent was a criminal case not involving sequestration and is not applicable to the present situation.

The purpose of sequestration is to preclude communication among witnesses in order to enhance the probability that they will each tell their own recollection of events, uninfluenced by contemporaneous accounts by other persons. The primary and most direct method of communication precluded is the direct observation of and listening to any other witnesses' testimony prior to the time a subsequent witness is called to testify. Witnesses also are precluded from discussing their testimony or that of others among themselves. Clearly, an attorney or other person also is precluded from telling present and future witnesses what past witnesses have said when they testified under a sequestration order. Communication through the means of allowing witnesses to read the transcripts of the testimony of previous witnesses generally is not possible in short or moderate length proceedings; however, it is not uncommon for recesses to occur between the presentation of the General Counsel's case and that of a respondent. The same harm to the reliability of the record occurs regardless of the method of communication and such a disclosure of testimony must be considered to be equally violative of a sequestration order.

Here, the evidence regarding witness Sostre clearly demonstrates the corruption of the record that can occur through the violation of the sequestration order. Sostre admitted his version of how the hiring of Jusino occurred changed after discussing that subject with Negron. Sostre testified on direct examination during the morning of September 13 and changed that afternoon. Sostre admitted changing his version due to the fact that he had passed a note to Negron, which evidently happened during the lunchbreak, a time when Sostre was under constraint not to discuss his testimony with anyone. It is evident that Negron must have answered Sostre's note and must have spoken with Sostre because that incident was what prompted Sostre to change.

The testimony of the vast majority of the Respondent's direct witnesses is tainted by inherent untrustworthiness as a result of the clear and repetitious violations of the sequestration order. This is born out by the brief analysis of testimony set forth above which demonstrates equivocal and internally contradictory testimony as well as apparent collusion, distortion, and coloring or tailoring of testimony. Moreover, this all occurred with the knowledge and assistance of Respondent's attorneys. The likelihood that such testimony is unreliable is so substantial that it equates to a showing that the General Counsel and the Charging Party have been preju-

diced by the overriding effect that such testimony could have on the development of a truthful and complete record.

Violation of a sequestration order on a minor scale often can be disposed of by treating the matter solely as an unfavorable reflection on credibility. Here, however, the record presents innumerable factual issues that stand to be resolved based substantially on the credibility of witnesses and, as pointed out by the General Counsel and the Charging Party, the violations of the sequestration order are not singular or isolated but are substantial, pervasive, and prejudicial. In this proceeding the Respondent and its attorneys have utilized the extraordinary tactic of having future witnesses review transcripts of past testimony, either unthinkingly or in disregard of a sequestration order. I conclude that such conduct goes beyond the reasonable bounds of proper trial preparation and supports an inference that testimony generated under these circumstances has been so altered or tailored as to be rendered inherently unreliable.

Although the usual remedy for violation of a sequestration order is to not credit the challenged testimony, see *Zartic, Inc.*, 277 NLRB 1478 (1986), and the *Unga* case supra, it is properly a matter within the discretion of the trial court to allow or disallow such testimony, see *United States v. Ortega-Chaves*, 687 F.2d 1086 (1982). Here, the record demonstrates repeated and pervasive violations made with the concurrences and assistance of counsel and, under such circumstances, I find that proper cause has been shown to justify a grant of the relief requested in the General Counsel's motion. Accordingly, the motion is granted and I order that except to the extent that admission against interest were made, the testimony of all witnesses who violated the sequestration order be, and it is stricken.

### III. PRELIMINARY MATTERS

By an informative motion dated February 9, 1989, this administrative court was informed of the decision of the United States District Court in *Mary Zelma Associate v. El Mundo Corporation a/k/a Worldwide Management Corporation*, Civil No. 88-1338, dated February 3, 1989, wherein the court granted an injunction pursuant to Section 10(j) of the Act on matters substantially parallel to those pending final decision in this administrative proceeding. In a telephone conference call held on February 28, 1989, it was disclosed that the Respondent was acting to comply with the District Court's Order and, among other things, had recognized the Union. Accordingly, a time period was established to allow the parties to explore the possibility of settlement, the partial resolution of some outstanding issues, or identification of possible differences with the court's factual findings. By motion dated March 30, 1989, this court was informed that discussions occurred but that no agreements were reached. No further representations were made by any party.

In accordance with the request of the General Counsel, appropriate notice is taken of the District Court's opinion. The court's opinion is based on 50 factual findings. Most of these facts are substantially the same as the 49 stipulations entered into by the parties and reflected in Joint Exhibit I. Otherwise, the parties did not identify any specific differences with the findings of the court and, on my review, I find them to be consistent with the record in this proceeding and they are adopted and, as pertinent, set forth or incorporated in the following description of facts.

## IV. THE ALLEGED UNFAIR LABOR PRACTICES

This proceeding involves the labor-management relationship at two separate business entities: El Mundo, Inc. and El Mundo, Corp., each engaged in the publication of a daily Spanish newspaper in Puerto Rico called "El Mundo." The first entity, El Mundo, Inc., was formed in 1919 and operated until August 30, 1987, when it stopped its publishing operations, and terminated almost all of its employees. At that time ownership and control of El Mundo, Inc., rested in the hands of Fundacion Angel Ramos, Inc. The newspaper and the Union were engaged in lengthy contract negotiations that had cumulated on or about August 15, in a membership rejection of a proposed bargaining agreement. On August 19, the directors of the Fundacion acknowledged that inquiries regarding the purchase of the newspaper had been received from Hector L. Gonzalez and they decided that if no sale was consummated within a reasonable time the newspaper would be closed. The record otherwise shows that Gonzalez first expressed his interest in purchasing the newspaper in a letter to El Mundo, Inc., dated November 26, 1986, in which he stated his assurance that:

[M]y interest and purpose is to insure that El Mundo continues, as it has in the past, to serve our island as a totally independent and courageous newspaper.

Since its certification in 1962 the Union has been the exclusive bargaining representative of employees in the administration, maintenance, editorial, production, and circulation departments. Since 1964 several collective-bargaining agreements were reached, the last one of which was executed on September 6, 1985. That agreement expired September 30, 1986, but work continued thereafter under the existing contract terms. Subsequently, numerous bargaining sessions were held, with agreements being reached on at least 12 articles, however, major issues remained, including the Employer's demand to subcontract unit work, essentially a proposed reorganization of the circulation and transportation department that would convert union employees to independent agents, excluded from the unit, and the consolidation of certain job classifications, proposals that each would involve the layoff of some employees.

The Employer's proposals anticipated savings of approximately \$5 million. The Union's counterproposals, provided cost reduction of \$3 million, but provided that the employees of the circulation department were to remain as part of the unit (with some necessary loss of jobs) in a reorganization along the lines of a similar reorganization at the circulation department at El Vocero, another newspaper in Puerto Rico, whose employees are also represented by the Union. During the latter negotiations the Employer's spokesman was counsel Miguel Palou, who subsequently represented the interest of Gonzalez and El Mundo Corp. in regard to labor matters.

On August 21, a meeting of principals and the Commonwealth's Department of Labor planned to discuss the impact of the threatened closing became a meeting with Gonzalez who announced his interest in buying the newspaper. At that time Gonzalez, was the 100-percent stockholder of Worldwide Management, Inc., an entity which subsequently became El Mundo, Corp. Gonzalez was known to the Union as a substantial stockholder of El Reportero de Puerto Rico,

Inc., an entity that previously had published a newspaper and whose employees were represented by the Union.

Two days earlier, at a meeting of the Fundacion, the board of directors were advised that the Union had rejected El Mundo, Inc.'s proposed labor contract and that inquiries for purchase of the newspaper had been received from Gonzalez and another party. The Board concluded that if no sale was consummated within a reasonable period of time, the newspaper would be closed down.

On August 21, Gonzalez met with union representatives and assured them of his interest in keeping the El Mundo newspaper operating and his interest in reaching an agreement with the Union prior to a purchase. He indicated that he would assume a successor position and would voluntarily assume the predecessor's responsibilities toward the Union.

At a meeting on August 22, Gonzalez told the Union that he had no problem with extending the expired collective-bargaining agreement. However, Gonzalez requested that it be extended for 18 months, rather than 12, and the Union agreed.

On August 24, Gonzalez submitted a memorandum of understanding to the Union which stated the proposed terms and conditions including those pertaining to subcontracting and the Union's commitment to withdraw its complaints. In a letter dated August 25, Gonzalez advised the Union that he had met with them to negotiate because he was interested in buying the newspaper, was pleased with the negotiations with the Union, and discussed the items agreed on which were to be included in the collective-bargaining agreement.

On August 30, El Mundo, Inc. closed its publication operations and terminated almost all the employees included in the unit. (Most of the employees subsequently received severance payments pursuant to the provisions of the collective-bargaining agreement.) The next day Gonzalez held a press conference and announced that in 2 or 3 weeks he was going to open a new newspaper similar to U.S.A. Today. At the same time he hired approximately 20 former El Mundo, Inc. employees for the editorial department of the new venture. The next day, however, Gonzalez arranged a meeting with Baez and informed him that he was still interested in purchasing El Mundo and wanted to know whether the Union was willing to reach an agreement with him. Baez told Gonzalez that the Union was willing to help him. The next day Gonzalez met with the Union's bargaining committee and informed them of his continued interest in purchasing El Mundo but conditioned his action on the Union's withdrawal of pending unfair labor practice charges at the Board and other pending court cases. By resolution dated September 3, the Union agreed to withdraw all pending charges.

On September 4, Gonzalez made an offer to Fundacion for the purchase of the El Mundo, Inc. stock for \$3 million; \$1.5 million payable at closing and the balance in six consecutive annual installments.

On September 5, Gonzalez and the Union's bargaining committee met to discuss an agreement and Gonzalez explained his intention of continuing the paper, as restructured, to make it a viable operation. This theme was repeated to an assembly of the union membership held on September 10, where Gonzalez spoke of his commitment to keep the newspaper operating and stated that he had been engaged in productive talks with the Union and that there were no obstacles remaining for the purchase of the stock.

Former reporter Maritza Diaz-Alcaide testified that during this period of time she was asked to work for a new newspaper that was being organized and did so at a facility owned by Gonzalez, along with approximately 12 other El Mundo people. She also said that several days after she started Gonzalez spoke with the group and told them he was still interested in buying El Mundo and that the group would be part of his new team. She also named four of this group that became subsequent employees of the Respondent; however, she took a position with a news agency operated by the government of Spain. As otherwise discussed below, this paper with a suggested title, "Hoy," was a fledgling newspaper publishing venture developed by Gonzalez as an alternate course of action should he fail in his efforts to negotiate a purchase of the El Mundo newspaper.

Director of Photography Eduardo Figueroa also named several specific El Mundo, Inc. employees who worked for "Hoy" (and were paid by one of Gonzalez' companies), during the interval between August 30 and November 9 and were subsequently hired by the Respondent on or after November 9.

On September 11, Gonzalez made a payment of \$1,500,000 to the Fundacion and on September 14, he told Baez that he had reached an agreement with Fundacion and wanted to clarify certain matters with the Union.

The parties met on September 15, and discussed the call back of employees. Gonzalez ended the meeting in order to prepare a letter to the Union. That evening Respondent's attorneys, Miguel Palou and Noel Gonzalez, delivered a letter to the Union with a proposal for a new agreement to be effective once the sale of the newspaper stock took place, however, the proposal differed from positions previously assumed which the Union felt had been already agreed to by the parties, positions that had been ratified by the employees at their September 10 assembly.

On September 17, the parties met again and discussed the modifications to the agreements and the new matters raised by the Employer but reached no agreement. That evening Jose Ivan Aldea, an agent for Gonzalez, verbally notified the Union of the names of the employees of El Mundo, Inc., who would be recalled to work on Respondent's commencement of publication and said that an additional 110 employees from the circulations department would be recalled. In addition, he said 24 former employees from El Mundo, Inc., would be offered independent contractor positions at the circulation department. The breakdown of employees that were going to be recalled in each department was as follows:

- Editorial 31
- Maintenance 6
- Advertisement/Sales 4
- MIS 4
- Production 28
- Accounting 10
- Circulation 110
- Personnel and
- Transportation 0
- Administrative Services 4

The parties met and discussed their differences, however, they were unable to reach an understanding and, on September 21, the Union issued a press release stating that the

reopening of the newspaper might not come through and that Gonzalez was backing away from his original position.

On September 26, Gonzalez drafted a letter to Fundacion stated the terms of the purchase of stock of El Mundo, Inc., however, the word "stock" is crossed out and replaced by the word "assets." This was followed with an offer for the purchase of assets made by letter dated September 28. A Fundacion board of directors meeting was held on October 7, 1987, and the sale of assets to Gonzalez was approved.

On November 8, 1987, El Mundo, Inc. and Worldwide Management Corporation executed an Asset Purchase Agreement whereby Respondent purchased the assets and business of El Mundo, Inc., and executed a lease agreement whereby Respondent leased the premises where the newspaper had been operating.

Previously, on November 2, Jose Ivan Aldea had prepared a memorandum for Gonzalez on employee staffing with the planned salaries, fringe benefits, and organization of the newspaper. Beginning on or about November 9, Respondent began assembling a staff and preparing to publish a newspaper. In the period between November 9 through December 16, 1987, Respondent employed 20 supervisors 8 of which had previously been employed by El Mundo, Inc., it employed 36 employees 16 of which had previously been employees of El Mundo, Inc., and it employed 20 area supervisors 11 of which had been previously employees of El Mundo, Inc. As of December 21, 8 of 21 supervisors and 18 of Respondent's 45 employees had been previously employed by El Mundo, Inc.

Additional details concerning various events surrounding the assembly of the newspapers staff are set forth below. In addition, it is noted that between November 9, 1987, and August 5, 1988, Respondent hired 3 former El Reportero employees as area supervisors and 17 former El Reportero employees for other positions.

On December 4, Sergio Camero, Respondent's president, prepared a memorandum on employee recruitment by department, position, and names (for those positions already filled), and projections as to when certain positions had to be filled. He noted that adjustments might have to be made since the plan had been designed with the full production of the enterprise in mind.

On December 16, the Union requested a meeting with Gonzalez to discuss the terms and conditions of employment of the employees, according to the conversations and agreements that had taken place prior to the purchase.

Gonzalez replied by letter dated December 21, and stated that since he had unsuccessfully tried to purchase the shares of the newspaper and that since probably less than 25 percent of the new employees would involve former employees, it was his understanding that the Union was not a majority, and thus, it could not be imposed on the employees.

The Union filed its first unfair labor practice charge on December 29. The Respondent published its first newspaper on January 6 and 8, 1988, Respondent changed its name from Worldwide Management Corporation to El Mundo Corporation, the name by which it is presently known.

#### V. DISCUSSION

The alleged unfair labor practices are the outgrowth of the closing of one business and the opening of another similar enterprise. This was accompanied by irregular hiring prac-

tices and a failure to recognize the Union that represented the employees of the closed business. The several issues and additional factual findings will be further discussed in the following subsections.

#### A. Successor Status

The traditional standard for the evaluation of successor status and of the resulting, concomitant duty of a successor employer to bargain with a union that represents the predecessor's employees, derives from the decision of the Supreme Court in *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

In determining whether a purchaser is obligated to bargain with the exclusive representative of its predecessor's employees, the basic test is whether there is substantial continuity in the employing enterprise. Where there is such a continuity, the presumption of majority status by the Union under the predecessor is not affected by a change in ownership. The traditional criteria for this test includes whether there has been substantial continuity in the following: (1) business operations; (2) plant; (3) work force; (4) jobs and working conditions; (5) supervisors; (6) machinery, equipment, and methods of production; and (7) product or service. See *Aircraft Magnesium*, 265 NLRB 1344 (1982). Applying these well-settled criteria to the totality of the circumstances here, it is concluded that Respondent is a successor.

Respondent's argument to the contrary relies primarily on an attempt to distinguish the decision in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987). In this case the Supreme Court states that a purchaser succeeds to the predecessor employer's existing obligation to recognize and bargain with an incumbent union that represented a unit of the predecessor's employees if the purchaser acquires "substantial assets of its predecessor and continue[s], without interruption or substantial change, the predecessor's business operations," and if a majority of the new employer's unit employees were employed by the predecessor.

Specifically, Respondent points out that it made major changes in the circulation department by utilizing independent contractors rather than employees driving company vehicles for the distribution of the paper, that it changed the number and identity of substantial numbers of supervisors, that there was a hiatus in operation for 4 months, and that it has not hired a majority of its work force from former employees.

The record here shows that since Respondent first became interested in purchasing the newspaper, it made repeated representations that no matter how the purchase would take place, its plan was to continue publication of the oldest newspaper in Puerto Rico without any major interruption or any substantial changes and that it realized that it was going to become a successor Employer and would have to deal with the Union. Although Respondent changed its plans from a stock purchase to an asset purchase agreement, it purchased substantially all the assets of El Mundo, Inc., including the press, machinery, equipment, motor vehicles, furniture and fixtures, inventory, office supplies and equipment, periodicals and newspaper library, photo library, research data, computer programs and software, accounts receivable, customer list, agent lists, trademark, trade names, service marks, copyrights, and patents, including the name "El Mundo," and its rights, title and interests in leases, security deposits and con-

tracts. And, on the same date as the purchase, Respondent also executed a lease agreement whereby it leased the same building and real estate previously used by El Mundo, Inc. to conduct its business operations.

Although the paper was not published for a 4-month period, Respondent started hiring employees after 2 months and when the newspaper resumed publication it had the same name, format, and basically the same sections and organization. During the first week of publication Respondent continued publishing the information that the newspaper had been founded in 1919, the date when El Mundo, Inc. was founded, and Respondent also used the motto used by El Mundo, "Truth and Justice." Respondent also used the job application forms, contract forms with carriers and other office papers used by El Mundo, Inc. together with its name, logo, and address. Only subsequently did it make minor changes.

As pointed out by the Respondent, changes in the circulation department were made, however, these changes were matters that were proposed by Respondent in discussions with the Union during August and September, when it was pursuing a purchase of its predecessor's stock and such changes are not inconsistent with successorship status.

In a similar vein, the hiatus in production totaled only 4 months and, otherwise, at Respondent's request some employees continued nonproduction task until at least September 18, in order to maintain presses and equipment and it initially planned to resume publication sometime in the third or fourth week of September. Meanwhile, Gonzalez also hired a group of at least a dozen employees to prepare for possible publication of another newspaper ("Hoy"). After the asset purchase was agreed to, Respondent again made plans to start publication in October, and at successive intervals thereafter a number of employees were hired beginning in early November, as soon as the purchase agreement was executed and only 2 months after the last publication by its predecessor.

The work force did change in some respects, both with respect to supervisors and employees, however, as of December 16, when the Union requested a meeting with Respondent, 27 of 56 nonsupervisory employees (including "area supervisor" positions) were previous employees (48 percent), and 8 of 20 supervisor positions were filled by persons who had worked for the predecessor. As the staffing increased to a total of approximately 147 nonsupervisory employees on February 25, 1987, some 52 or approximately 35 percent were exemployees. As otherwise discussed in section E below, the record supports a finding that the Respondent engaged in discriminatory hiring practices in an effort to avoid the employment of a majority percentage of former employees and, therefore, it is appropriate to infer that, but for its discrimination, Respondent would have hired or retained the predecessor's employees.

Here, it is clear that the former El Mundo Inc. facility is being operated by Respondent for the same purpose, publication of a newspaper. This newspaper carries the same name and is specifically presented to the public in a manner designed to convey the impression that it is a continuation of the paper first established in 1919 by its predecessor. This impressing is consistent with the representations that were repeatedly made prior to Respondent's letter of December 21, when it first informed the Union that Respondent would not recognize it as the representative of the majority of employ-

ees. Although some minor changes in the paper's masthead were made several days after it first resumed publication, it has the same format, syndicated features, advertisers, and customer base. Despite the corporate change and the decision that the purchase took place through a purchase of assets, rather than stock, only minor changes in plant operations occurred. Except for its change in the method of distribution,<sup>2</sup> Respondent otherwise uses the same printing process with many, although fewer, former employees performing the same or similar functions. As noted, no significant hiatus occurred before organizational operations and subsequent republication began and, under the totality of circumstances, I find that the General Counsel has shown both substantial continuity and an inferred retention of a majority of exemployees. Accordingly, I therefore conclude that El Mundo Corp. (formerly known as Worldwide Management Corporation), is a successor employer to El Mundo, Inc., and, as such it has an obligation, on demand to bargain in good faith with the Union.

#### B. Refusal to Recognize and Bargain with the Union

As noted on December 16, the Union requested that Respondent honor agreements previously reached on September 10, and requested that it recognize and bargain with the Union. Respondent refused to do so and, accordingly, I find that it violated Section 8(a)(1) and (5) of the Act, as alleged.<sup>3</sup>

#### C. Unilateral Changes

It is admitted by Respondent that it has instituted unilateral changes in wages, benefits, and terms and conditions of employment different from those previously established by collective bargaining between the Union and its predecessor. These changes include substantial reductions in the wages and benefits of its employees and changes in their working conditions. Another significant change is in the operation of the circulation department where the distribution function was subcontracted to so-called "independent contractors."

The record shows that during negotiation after El Mundo, Inc. stopped publication the Respondent was willing to give the employees the same wages, benefits, and terms and conditions of employment established in the prior collective-bargaining agreement. Although the Union and Respondent had some dispute as to other matters (specifically severance pay and consolidation of work), and the Respondent bargained with the Union about subcontracting, the Union had no major objection to an agreement regarding the subcontracting of the unit work under the condition that the "independent contractors" would be included in the bargaining unit as they are in other newspapers in Puerto Rico and Respondent then agreed not to subcontract any unit work except in the circulation department. When publication resumed, Respondent went forward with the contracting of independent contractors

who otherwise were excluded from status as employees. This action a mandatory subject of bargaining and a change in a term and condition of employment.

Where, as here, the record demonstrates a discriminatory hiring policy, there is a presumption that a successor employer would have retained "substantially all" of the predecessor's employees, had it not been for its discriminatory hiring policy. Under these circumstances, the purchaser is legally obligated not only to recognize and bargain with the Union that represented the predecessor's employees, but to maintain the terms and conditions of employment which existed under the predecessor until it bargains with the Union about any changes. See *Kallman v. NLRB*, 640 F.2d at 1102-1103 (1981); and *NLRB v. Amateyus*, 817 F.2d 996 (1987).

Here, the Respondent was well aware of its predecessor's bargaining agreement, of its potential successorship obligations, and of its own bargaining with the Union and their tentative agreements on substantial issues. The record, however, shows that despite a request for bargaining from the Union, it resumed publication after making admitted unilateral changes in terms and conditions of employment. As Respondent is otherwise shown to be a *Burns* successor, I conclude that its changes in this respect must be found to be in violation of Section 8(a)(1) and (5) of the Act, as alleged.

#### D. Supervisors

Section 2(11) of the Act defines a supervisor as:

... any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The existence of any one element can be sufficient to convey supervisory status, however, sporadic or occasional exercise of supervisory authority is insufficient to make an employee a supervisor. Also, investiture with a title and theoretical power which may imply supervisory authority likewise can be insufficient to transform a rank and file employee into a supervisor.

Here, the Respondent contends that the persons employed under the title "Area Supervisor" are either statutory supervisors or managerial employees. The circulation department is headed by a circulation manager, three area managers (direct sales manager, metropolitan area manager, and island manager), and two regional managers. Under the regional manager there are 22 "Area Supervisors" and two direct sales supervisors. Under the area supervisors there are 117 so-called independent contractors.

All personnel matters regarding the independent agents are handled personally by the circulation manager. Area Supervisor Roberto Jusino testified that he was never given any written job description, however, he understood that his duties and responsibilities were to hire the carriers (who are not employees), assist the independent contractors in the collection from the carriers, help carriers with the distribution of the newspapers, look for new subscribers, organize groups of carriers through different areas to increase sales, substitute

<sup>2</sup> And, despite the change to so called "independent agents" for the circulation department these agents perform the same functions previously performed and such agents status does not preclude union representation, inasmuch as similar agents have been included in the bargaining unit as a matter of practice in other area newspapers, including *El Reportero*.

<sup>3</sup> As noted by the General Counsel, the record shows that Respondent began hiring employees on November 9 and that, accordingly, its obligation to recognize and bargain with the Union started on that day. See *Love's Barbecue Restaurant*, 245 NLRB 78, 82 (1979).

for agents who were absent, distribute down routes, adjust the invoices until certain limits, and to prepare a report if any agent had an unusual decrease in sales. These were the same duties and responsibilities he had when he worked as a temporary employee at El Mundo, Inc., as a district manager, an employee position that was part of the bargaining unit (temporary employees, however, were not part of the unit).

Although the area supervisor select the newspaper carriers, these persons are not company employees and the area supervisors do not set the compensation to be received by the independent contractors or the carriers nor do they independently enter into contracts. They adjust invoices but do so according to a mathematical formula established by the contracts. They may make recommendations regarding possible candidates for independent contractor positions, but otherwise are not shown to make use of independent judgment or to exercise their own discretion.

Here, the Respondent has raised the issue of the area supervisors' status and therefore has the burden of proof to establish that status, see *Thayer Dairy Co.*, 233 NLRB 1383 (1977); however, it did not present testimony directed at this issue. Here, I find that the use of the term "supervisor" or "manager" is irrelevant and that the significant criteria discussed above, as well as the past practices of Respondent's predecessor, all lead to the conclusion that the position of area supervisor is not that of a "manager" or statutory supervisor within the meaning of Section 2(11) of the Act, see the *Washington Post Co.*, 254 NLRB 168, 181-183 (1981). Accordingly, I further find that for all purposes relevant here, those positions now entitled as area supervisors (formerly district managers) are employee positions encompassed within the certified bargaining unit.

Paragraph 6(a) of the complaint was amended during the hearing to allege supervisory status for Photography Director Eduardo Figueroa. Figueroa had been in a bargaining unit position as chief photographer when El Mundo, Inc. stopped publication on August 30, however, he was one of the first persons employed by Respondent on November 9. On August 1, 1988, he was also given the title of assistant to the president and it appears that he was understood by current and former employees to hold such a position during the fall of 1987. Figueroa testified that as photography director he was in charge of interviewing and hiring personnel for the photography division. Among the persons Figueroa hired were Mauricio Pascual and Cesar Silva. He also testified that between the time the newspaper closed and his employment by Respondent on November 9, he also worked for Hector Gonzalez on the formation of a newspaper to be called the "Hoy," a venture that otherwise appears to have been an alternative plan for Gonzalez to reenter the publication field if he otherwise did not succeed in his negotiations to purchase the El Mundo newspaper. Reporter Maritya Diaz-Alraide testified that Figueroa was represented to be and participated in a managerial role during this period.

Under these circumstances, and, especially in view of Figueroa admitted functions and the criteria discussed above, I conclude that the General Counsel has persuasively shown that since November 9 Figueroa has been a statutory supervisor within the meaning of Section 2(11) of the Act, as alleged.

#### E. Alleged 8(a)(1) and (3) Violations

After El Mundo ceased publication on August 30, Hector Gonzalez and companies under his control, including the Respondent here, engaged in an ongoing procedure directed at the goal of publishing a newspaper in place of or as a successor to El Mundo. The Respondent ultimately purchased substantially all the assets of El Mundo, Inc., and it acted to preserve these assets as soon as El Mundo, Inc. ceased publication in order to be in a position to resume publication at an early date. After August 30, Gonzalez immediately began lining up the necessary editorial staff and the contingency development of the "Hoy" newspaper venture. Some core members of this group, both supervisors and employees, subsequently were hired as managers and employees of the Respondent, beginning November 9.

Full staffing of the various managerial and operational positions was an obvious prerequisite to republication and the Respondent, under the direction and control of Hector Gonzalez, continued to develop a plan for efficient organization and operation. It organized the necessary departments and established minimal staffing requirement. This organization closely paralleled that utilized by the predecessor's company, with the exception of changes in the means of distribution of the newspaper through the use of independent contractors, in lieu of employees, within the circulation department.

During the period leading up to a final purchase agreement, Gonzalez repeatedly acknowledged the existence and valued contributions of the newspaper's employees, his expectations regarding their participation in continued publication under his control, and an understanding of the Union's position as the certified bargaining agent for the employees. On September 17 the names of 87 employees in departments other than circulation, and 110 employees from circulation were identified as those that would be recalled upon the reaching of an agreement. When no agreement was finalized, Gonzalez changed his purchase proposal to one reflecting the purchase of assets rather than stock and apparently established a strategy whereby it would attempt to pursue its publication objective without continued recognition of the Union and with a more reduced staffing level. A memo reflecting the proposed staffing was prepared on November 2 and 1 week later hiring began.

The manner in which Respondent and its agents conducted this hiring forms the basis for allegations that it engaged in discriminatory hiring practices and interfered with employee's Section 7 rights.

As noted above, Respondent sent a letter to the Union on December 21 in which it specifically stated that it intended to hire 175 employees (including supervisors) and that out of those only 25 percent would be former El Mundo, Inc. employees. As of December 21, Respondent had hired 52 employees out of which 17 were former El Mundo, Inc. employees, plus 20 area supervisors of which 11 were former El Mundo, Inc. employees (of a total of 72 unit positions, 28 former El Mundo, Inc. employees). Thus, on December 21, Respondent had filled approximately 40 percent of the unit positions with former El Mundo, Inc. employees and had approximately 96 unit positions vacant.

The Court in the related 10(j) proceeding found that Respondent's hiring practices regarding independent contractors hired to perform the tasks of former employee positions in the circulation department can be examined and taken into

consideration by the Court as corroborative of the discriminating employment practices used by the Respondent to fill the employee positions. As found by the Court, these practices illustrate the antiunion animus shown by supervisors implementing the Company's hiring practices and I find that they support the finding otherwise reached here.

Moreover, the matter of the status of these independent contractors is a subject of the remedy here inasmuch as the subcontracting arrangement is a matter of future mandatory bargaining and it may well be that these positions will be considered to be bargaining unit positions as they are at another newspaper in Puerto Rico.

The record further shows that out of the 85 employees hired by Respondent between December 22 and February 25, 1988, at least 58 filed their employment applications after December 21 (most of the employees hired during this period filed their employment application the same day they were hired). In addition, the record shows that as of February 25, 1988, there were 11 vacant positions and that they were unfilled despite the fact that applications of qualified former employees were on file. Accordingly, it is clear that at the time it refused to deal with the Union the Respondent had no legitimate bases for predicting or anticipating that its total work force would be made up of only 25 percent former employees. The record shows that numerous former employees had filed applications but were not hired and often not even interviewed. Otherwise, Respondent made no effort to openly seek employees through any public process but instead appears to have relied on word of mouth and personal knowledge by supervisors, a method shown to be tainted by practices designed to restrict the hiring of former employees. Only 23 out of 85 persons hired in the 2 months after December 21 were former employees and, accordingly, I conclude that the record clearly supports the inference that Respondent established a predetermined quota to limit its hiring of former El Mundo, Inc. employees to a nonmajority level and thereby make it appear that it was not a successor employer.

This inference is fully supported by the separate and cumulative testimony of numerous credible witnesses called by the General Counsel. As a result of my conclusion in section 11 of this decision, striking the testimony (except admissions against interest), of witnesses who violated the sequestration order, this testimony stand essentially un rebutted. Otherwise, however, I also find the testimony of the General Counsel witnesses is independently persuasive and corroborative and inherently more credible than the contradictory denials and explanation offered in the stricken testimony of the Respondent's witnesses.

As pointed out by the Charging Party, the Respondent's supervisors did not follow a pattern of employment norms and each manager testified to a different procedure assertedly following their own peculiar hiring criteria. The one common aspect within the broad guidelines said to be established (i.e., hire the best people available) was the nonhiring and often the noninterviewing of former El Mundo, Inc. employees, especially those known to have been union advocates. Other employee-applicant's who otherwise had worked successfully for many years were not hired, allegedly because they were not qualified. The reasons given for disqualification appear to be strained, at best, especially where it is shown that numerous inexperienced vocational school students were hired in

preference to experienced former employees. It appears that applications were lost or misplaced and second applications or resumes had to be filed, if the loss was discovered by the applicant. It also is shown that some applicants were incorrectly told there were no vacancies for particular positions, and applications were sometimes not forwarded to an appropriate department. Some specific examples of what occurred are set forth below.

Juan Colon Ortiz was manager for transportation and direct sales of El Mundo, Inc. on August 30, a supervisory position. In mid-November he was hired for the Respondent to be manager of direct sales by Graciliano Sostre, director of the circulation department. Colon's duties were to reorganize the circulation department and to hire independent contractors. He also supervised several others in the department and was a statutory supervisor. Colon attended various organizational meetings and on one occasion Director Sostre told him that they (the circulation department) could not go over the 35-percent quota of former El Mundo, Inc. unit employees because other departments had already exceeded that limit. Sostre also instructed Colon that he could interview and hire qualified persons to work under them or fill independent contractor positions, however, if the applicant was a former El Mundo, Inc. unit employee Colon was not authorized to formally hire him as an employee or assign him to a specific area as an independent contractor even if the applicant was qualified unless it was submitted to the security office and cleared by them. Sostre told Colon that those instructions were not his but rather "came from above."

Out of approximately 90 applicants interviewed by Colon, around 30 were former El Mundo, Inc. employees. Colon considered almost all of them qualified for positions at the newspaper either as clerks or in area supervisor type employee positions or as independent contractors, however, only three or four were actually hired or assigned independent contractor's positions and Colon sometimes filed positions with persons he considered less qualified after the applications of former employees were not cleared. Otherwise, Respondent did not use this clearance procedure for candidates that had not worked at El Mundo, Inc.

Here, I fully credit Colon's testimony, Colon was a former supervisor with Respondent, who voluntarily left on January 30, 1988, to go to work with the newspaper El Vocero, at a managerial position. Respondent's supervisors, Sostre and Negrón, considered him to be a good supervisor, his demeanor was candid and direct, and I find that his testimony is not refuted by any other credible evidence.

Jose Ivan Aldea was Respondent's vice president and general manager at the start of operations. He was hired by Respondent on September 7, and prepared the September 17 list of all the employees that Respondent was going to initially hire pursuant to the agreements reached with the Union on September 10. This list was based on recommendations given to him by former El Mundo, Inc. supervisors and managerial staff. Aldea admitted that when Respondent started to hire personnel on November 9 it could have used the September 17 list but did not. His explanation as to why the list was not used was that it was "because Respondent's method of purchase of the newspaper changed from a stock purchase to asset purchase."

Aldea also prepared a memorandum on November 2 with the names of former El Mundo, Inc. employees that Re-

spondent should have employed upon commencement of operations. Most of the former El Mundo, Inc. employees named in that memorandum were not hired, even though these same employees were said to be the best in the industry by Gonzalez when he addressed the employees at the ratification assembly on September 10.

Orlando Santos, assistant production manager, testified that he recruited 12 students from the vocational school to work in paste-up, photoengraving, and press. These individuals had no experience whatsoever in the newspaper industry, but were hired over former El Mundo, Inc. employees who were qualified for the positions (in fact, Santos had recommended them for recall in the listing on September 17), but who were not even called to be interviewed after filing applications.

Sales Director Patricia Eaves testified that she did not know the qualifications of the ex-Mundo employees who applied for jobs. She testified that she was able to know what the applicant's qualification were just by looking at the applications. She admitted that she received 30 to 50 applications of ex-Mundo employees from the personnel office. After reviewing the applications, specifically where the applicant had worked previously, she made a preliminary determination and only called for interview, those she found "qualified." Six specific former employees were not interviewed. Jose Cao Pampin was interviewed but did not hire Cao because he was related to someone who worked at her department. She then admitted that she knew Cao was only living with someone who worked at her department and that they were not married. Other evidence reflects that the Employer has no rule against relatives working together and that, for example, Sostre's and Noriega's sons both worked at the newspaper.

Luis Villares, Respondent's editor, said he made an initial determination as to whom to hire by looking at the names and reluctantly admitted that by looking at the names he might have been able to determine if some of the applicants were former El Mundo, Inc. employees (Villares previously had worked at El Mundo, Inc. for 13 years, finally as managing editor, however, he was at another paper at the time El Mundo stopped publishing). Villares also said that he discussed the hiring of El Mundo, Inc. employees with Respondent's president, Hector Gonzalez, because he was concerned about hiring former employees, but was told that he had a free hand. It also appears that Villares discussed hiring with Figueroa, who is a supervisor in his department. Thereafter, of the 20 persons Gonzalez previously had selected for the editorial department of the "Hoy" venture, most were not hired by Villares, nor were most of the ex-Mundo employees in Aldea's list of November 2.

Jose A. Avila, Respondents MIS manager, testified that he interviewed Annie Saldana and although he found her qualified he did not hire her because there was no position available for her. The record otherwise shows that Saldana filed her employment application on November 20, and that the person hired to occupy the position Saldana had occupied was not hired until January 4, 1988, the same day she filed her employment application. Two other specific ex-Mundo employees who had filed applications and were familiar with the computer operations within Avila's section but also were not hired.

Rafael Garcia is one of seven specific former El Mundo, Inc. employees who applied for or inquired about positions

with Respondent but were met with responses that both explicitly or implicitly reveal they would not hire them because of their past employment and union membership, and they were never offered jobs.

Garcia knew Circulation Director Sostre for many years and his son was baptized by Sostre. Garcia was a delegate at the circulation department and belonged to the Union's bargaining committee. In November, Garcia visited Sostre at his home and asked him for a job. Sostre asked Garcia what position Garcia would assume when the Union started collecting authorization cards. When Garcia said he would stay on the side lines, Sostre told him to fill out an application. Garcia did so and when he received no reply, he visited Sostre again in December. Sostre told him that he was in a difficult list because at the newspaper anything related to the Union "smells," but that Sostre was still trying to hire him.

Luis Rivera, a former general delegate for the Union, called Sostre in December and asked to be hired. Sostre replied that he could not hire him because of Rivera's participation in the Union. Sostre told Rivera that he had instructions from further up about not hiring anyone involved in the Union.

Juan Rivas Santos was a former union delegate for the photography department and an alternate delegate for the editorial department. Rivas spoke with Photography Director Eduardo Figueroa about the possibility of Respondent calling him back to work. Figueroa told Rivas that he had requested a resume from Mauricio Pascual and Alina Luciano but that in his case it was going to be uphill because up to then, Respondent had not asked for resumes from persons that had to do with the Union. Rivas conclude that it would be futile to file a resume, and did not do so.

Fernando Maldonado had a conversation with MIS Operations Supervisor Cesar Rodriguez in December, shortly after he had filed a second application (he had been told by Supervisor Jose Avila that his November application could not be found; however, it was among those produced in response to the General Counsel's subpoena). He told Rodriguez that he was the person who could help former employees like himself obtain employment with Respondent, because he was aware of their qualifications. Rodriguez replied that it was out of his hands and that since Maldonado belonged to the Union he could forget it.

Carlos Moreno Arroyo was a former general delegate for the Union. He had a telephone conversation with Supervisor Negron during the last week of December, and inquired about the status of his application. Negron said that he was trying to help him but that it was going to be difficult, explaining that Moreno was on a "blacklist" because he had been a general delegate of the Union, and Respondent's policy was not to hire union members. Moreno had held many positions at El Mundo, Inc., including those of district manager, manager driver, sports reporter, assistant street sales manager, office clerk, office supervisor, and cashier. The position he last occupied was vacant and controller Luis Canals told Moreno he was the person who should occupy that position, however, no job was offered.

After the paper reopened in January, Juan B. Jimenez Rios visited Sostre at his home and inquired about an application he had previously given Sostre. Sostre said that Jimenez had problems since he was very well identified with the Union. The record otherwise shows that Jimenez actively partici-

pated in the picketing activities held by the Union on January 5, 1988, and that Respondent took photographs of that picket line and had supervisors observe the participants.

Ramon Cantrev Valle, a former pressman, testified that a month after he had filed an employment application in mid-December he went to see Personnel Director Carlos Velez and was referred to Assistant to Production Manager Orlando Santos. When Cantre told Santos that Velez had sent him, Santos replied that "they themselves have told us not to hire . . . not to take in anybody from the Union, they are . . . they themselves are bringing them from the vocational school." Although some former pressmen had been hired by this time, remaining open positions were filled by inexperienced persons from the school. Cantre was not hired by Respondent but was sufficiently qualified to obtain a part-time pressman position at the San Juan Star newspaper.

Roberto Jusino testified that on December 11 he was hired as an area supervisor. That day, Metropolitan Area Subscription Manager Rafael Negron told Jusino that he had called Jusino to offer him a job since Angel Noriega had recommended Jusino because he had been only a temporary employee at El Mundo, Inc., had never been involved in union activities, and was not pro-UPAGRA (Union). Negron further stated that he had called Jusino and Pedro Acevedo because they were temporary employees at El Mundo, Inc., and Respondent was not hiring ex-Mundo employees nor prounion persons. Later that same day Negron told Jusino he should recommend agents with experience but that they should not be former El Mundo, Inc. employees, nor members of the Union.

After Jusino was interviewed and hired, Negron took him to see Circulation Manager Sostre. Sostre congratulated Jusino and told Jusino that from that moment the words union and strike were prohibited and to stay away from the ex-Mundo employees or else he would be adversely affected. On several occasions during the next month, he was again reminded by both Sostre and Noriega that area supervisors should not recommend ex-Mundo employees nor members of the Union for employment.

Jusino also testified that he overheard a conversation between Supervisors Sostre and Noriega the first week he was employed in which Noriega told Sostre that he had called Freddie Colon for a vacant position. Sostre told Noriega not to call Colon because he was a "bad" union member and he had been blackballed. That same week Jusino heard Noriega and Negron speak about some districts where they had no agents and Jusino suggested Respondent call Edelmiro Ramos and Damaso Gonzalez, two former El Mundo, Inc. employees. Noriega said that Damaso was an active union member who had always been very prounion but said that Edelmiro was a good employee, Negron interrupted and said that Edelmiro was very impulsive and had been a member of the Union and that they would blackball the two of them.

Near the end of December, Jusino heard a conversation in which Noriega recommended that Respondent hire Miguel Martinez, known as La Mona. As soon as Negron mentioned La Mona's name Sostre became very annoyed and told Negron "Damn it, Rafa, what are you thinking? You just have appointed this short guy who was an UPAGRA member and now you are going to call Martinez, who is an employee . . . ex-employee and also an UPAGRA member? Don't call

him to come over here because you are going to raise my percentage of Union personnel and I have to deal with that."

At the beginning of January, Jusino suggested that Negron hire Agustin Garcia for a vacant route. Noriega interrupted and said that Agustin was a subversive, and an activist and should not be called because he was very prounion and Negron told Jusino not to call Agustin because he would be an informer for the Union.

Shortly before the paper began publication, Personnel Manager Carlos Velez addressed a meeting of area supervisors, circulation managers, and the heads of each department and, among other things, told them that the words strike and union were prohibited and said that the persons there present had to be very careful recommending personnel to work in the newspaper and not to recommend any ex-Mundo employees or members of the Union.

After the paper resumed publication Jusino became disturbed by the conditions and on January 11, 1988, he contacted Francisco-Paco Rivera, a general delegate for the Union at the Reportero newspaper. After several meetings with Rivera, who served as middleman between Jusino and Angel Baez, executive secretary for the Union, Jusino started to distribute leaflets and bulletins among the Respondent's employees. He distributed union cards and met with the employees to discuss working conditions and the necessity of bringing the Union back. In a meeting on February 14, 1988, one of the employees to whom Jusino offered a card, refused to sign and asked Jusino to give Respondent a "break." The next day, February 15, 1988, Negron told Jusino that "there were a few things about [him]" that he was not liking, and that he was being discharged. When Jusino inquired what the "things" were, Negron did not reply and just said that he was discharged. Jusino then asked why Negron was discharging him since 2 days earlier Negron had congratulated him for his work because he was the only area supervisor that had his marketing research cards up to date and he had just brought in 123 new subscriptions. Negron lowered his head and told Jusino that he had to get rid of him immediately.

The next day Jusino went to the personnel office to look for a termination letter. When he inquired about the letter, the secretary at the personnel office told him that she could not give him such a letter because he was a probationary employee. Although Respondent apparently prepared a probationary contract for Jusino, it was never signed by anyone. (The evidence otherwise shows that the Respondent began a practice of filling out probationary contracts only after Jusino was discharged.) Jusino then went to speak with Sostre and asked the reason for the termination. Sostre replied that he did not have anything to do with the decision and that it was Negron, then added that Negron based his decision on the performance of Jusino at his district. Jusino told Sostre that it could not be so because there were other area supervisors with poorer performance in their districts.

Jusino never received a discharge letter, however, on March 15 Jusino saw Negron and Noriega at a restaurant. Noriega, who at the time had been promoted to city manager, greeted Jusino by saying: "My goodness, the prodigal son is here. After I find . . . get you a job, you sold yourself to UPAGRA, eh?" When Jusino answered that he was going to return to the newspaper, Negron interrupted and told Jusino that he was not going to return because Negron had every arbitrator on his side.

Negron testified that he recommended that Sostre terminate Jusino because he was disorganized and had communication problems, he lacked punctuality, the agents in his district complained about him, and his agents were not up to the level of others. On cross-examination by the General Counsel, however, the accuracy or factual basis for Negron's asserted rationale was substantially discredited. Jusino's credible testimony also disputed Negron's justification and it otherwise appears that Circulation Director Sostre admitted that the department had organizational problems for several months, with no accurate record keeping until the end of February, and that no other areas supervisors were discharged for similar problems.

As noted above, the testimony of supervisors who testified on behalf of the Respondent which denies or fails to acknowledge the described statements attributed to them by the General Counsel's witnesses has been stricken from the record in accordance with the findings in section II above because of the pervasive violation of the sequestration order. Otherwise, I find that the General Counsel's nonhostile witnesses testified in a forthright and credible manner, whereas the testimony of the Respondent's several witnesses displayed evasiveness, contradictions, evidence of unreliability, and, especially in the testimony by Sostre and Negron, the probability of collusion between them. Accordingly, I credit as truthful the testimony discussed above which shows that Supervisors Sostre, Negron, Figueroa, Santos, Rodriguez, Velez, and Noriega made statements that clearly stated or implied that Respondent would not hire former El Mundo, Inc., employees and/or union members or officials.<sup>4</sup>

Turning to the specific allegations of Respondent's violation of the Act, I find that Supervisor Sostos' questions to Garcia regarding his union preferences are inherently coercive in the context in which they were made and I find that the Respondent thereby is shown to have interrogated Garcia and interfered with, restrained, and coerced its employees and job applicants in the exercise of their rights guaranteed in Section 7 of the Act and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, as alleged. The numerous statements regarding the hiring of former employees or union members made by Respondent's supervisors to its predecessor's employees who were seeking reemployment also demonstrate that Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, and I therefore find that Respondent is shown to have violated Section 8(a)(1) of the Act, in this respect, as alleged.

I further find that this conclusion is entirely consistent with the showing that Respondent's managers made a conscious decision to attempt to avoid successorship status and thereafter established a quota for the hiring of former El Mundo, Inc. employees. After its plans changed from a stock purchase to an asset purchase, it specifically avoided the use of previously prepared hiring list of the apparently most qualified former employees and it specifically avoided the open, public recruitment of employees. It established internal provisions that resulted in the disparate treatment of applications by former employees, requiring such applications to be screened by the security office or personnel department and

hired inexperienced persons just out of school over experienced, qualified former workers. Applicants were told the Respondent would operate without a union and they were questioned about their continued union sympathies. And, as discussed above, a number of applicants were candidly told that their chances of being hired were effected by their status as former employees and by their former union activities. Other witnesses, especially Colon and Jusino, credibly testified regarding the existences of a quota system and plans and procedures to avoid the hiring of former employees. Respondent's conduct in this regard is shown to discriminate against all former employees and union members of its predecessor in regard to their hire and tenure of employment and it otherwise created a climate of futility regarding the possibility of employment for former bargaining unit members, and it thereby discouraged membership in a labor organization. See *State Distributing Co.*, 282 NLRB 1048 (1987). Accordingly, I find that Respondent is shown to have violated Section 8(a)(1) and (3) of the Act in this respect, as alleged.

As described above, Jusino was subjected to conduct attributable to the Respondent which included numerous specific examples of statements to the effect that the Respondent considered former employee and/or union member to be potential problems and that it wanted to avoid hiring them. When hired, he was told it was only because he had been a temporary employee at the predecessor company (and therefore not a unit member), had not been involved with and was not prounion. Shortly after the newspaper resumed publishing Jusino began participating in union activities which included distributing leaflets and union authorization cards to employees and meeting with employees to discuss the need for a union. One day after Jusino experienced a hostile refusal and argument at one such meeting, he was summarily fired, despite the fact that his work had been praised only a few days earlier.

In a discharge case of this nature, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employee's union or other protected concerted activities were the motivating factor in the employer's decision to terminate the employee. Here, the record shows that Jusino engaged in open union activity. Moreover, the timing of his discharge, one day after another employee reacted in a hostile manner to a union card solicitation, supports an inference that the Respondent had become aware of his union activity. Otherwise, it is shown that Respondent sought to limit the hiring of prounion employees and I find that antiunion animus has been established.

Under these circumstances, I find that the General Counsel has met his initial burden by presenting a prima facie showing sufficient to support an inference that Jusino's union activities were the motivating factor in Respondent's decision to terminate him. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980), see *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), to consider Respondent's defense and, in the light thereof, whether the General Counsel has carried his overall burden.

Respondent's defense is based on its contention that Jusino was discharged because he was disorganized, was late for meetings, was the subject of complaints by agents, and had

<sup>4</sup> Respondent failed to call Noriega and Velez as its witnesses to deny or explain the statements which were attributed to them.

low productivity. As noted above, the General Counsel elicited testimony discrediting these justifications and it appears that no other employee was subjected to discipline, let alone discharge, for possible similar conduct. In fact, Jusino had been praised for his work a day prior to the incident with the authorization cards. I find that the pretextual nature of Respondent's rationale is made apparent by Respondent's failure and refusal to give Jusino written or verbal reasons at the time of his discharge and its subsequent attempt to assert that he was a probationary employee when he had not signed a probationary agreement (as required by Puerto Rico law), or been advised to this effect and where it otherwise is shown that it began the practice of filling out probationary hiring agreement only after Jusino's termination.

Under all these circumstances, I conclude that Respondent has not met its burden of showing that Jusino would have been discharged absent his union and protected concerted activity. The General Counsel otherwise has met its overall burden of proof, and I further conclude that Respondent is shown to have violated Section 8(a)(1) and (3) of the Act in this regard, as alleged.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act and at all times material the Union has been the exclusive representative of all the employees in the unit described in the Order for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. Respondent El Mundo, Corp. is a successor employer to El Mundo, Inc., and by disavowing its bargaining obligation and refusing to recognize and bargain with the Union in good faith and by unilaterally modifying preexisting wages, benefits, and terms and conditions of employment without prior notification to and bargaining with the Union, the Respondent violated Section 8(a)(5) and (1) of the Act.

4. By interrogating job applicants about union sympathies and telling employees/applicants that they would not be hired because of their union affiliation or because they were employees of its predecessor, the Respondent has violated Section 8(a)(1) of the Act.

5. By failing to hire employees named in the appendix of this Order because of their union affiliation or previous employment, the Respondent in each instance engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act by interfering with the exercise of their rights guaranteed in Section 7 of the Act and by discriminating in regard to their hire or tenure of employment, thereby discouraging membership in a labor organization.

6. By discharging employee Roberto Jusino on February 15, 1988, the Respondent engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act, I recommend that the Respondent be ordered to cease and desist therefrom and to take certain affirmative action described below which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, I recommend that Respondent be ordered to reinstate Roberto Jusino to his former job or a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings he may have suffered because of the discrimination practiced against him by payment to him a sum of money equal to that which he normally would have earned from the date of the discrimination to the date of reinstatement, in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),<sup>5</sup> and that Respondent remove from its files any reference to Jusino's discharge and notify him in writing that this has been done and that evidence of the unlawful discharge or reprimands will not be used as a basis for future personnel action against them.

Having found that Respondent has refused to recognize and bargain with the Union as the exclusive representative of the employees in the appropriate unit as described, I shall recommend that Respondent be ordered to recognize and, on request, bargain in good faith with the Union as the exclusive representative of the employees in the appropriate unit with respect to wages, hours, benefits, and all other terms and conditions of employment, and reinstate all wages, benefits, and other conditions of employment which existed prior to the unilateral action. Having found that Respondent refused to hire most of its predecessor's employees pursuant to unilaterally established and discriminatorily effectuated conditions and criteria, I find it necessary that Respondent be ordered to offer jobs to those employees otherwise listed in the attachment to the appendix, who would otherwise have been offered jobs but for Respondent's failure to consider for employment these former El Mundo, Inc. employees on a non-discriminatory basis with the seniority and any other rights and privileges they would have enjoyed if they had been hired for such positions, or, if those positions no longer exist, to substantially equivalent positions and, because its actions were unlawfully motivated, dismissing, if necessary, any persons hired who were not former El Mundo, Inc. employees; and to make whole such listed employees for any loss they may have suffered by reason of the failure to hire; and to make whole all employees, past and present, for any loss they may have suffered by reason of the unilateral changes in their wages, benefits, and other terms and conditions of employment. Reinstatement shall be made on the basis of seniority in a manner consistent with the remedies provided in *State Distributing Co.*, 282 NLRB 1048 (1987), and *Service Operations Systems*, 272 NLRB 1033 (1984), and with the callback list prepared by Respondent on September 17, 1987. Backpay shall be computed in accordance with the formula set forth above and shall be effective from the time they would have been hired on and after December 22, 1987, and Respondent shall remit to the Union or any appropriate benefit fund, all payments owed and deductions due under the terms of its predecessor's last bargaining agreement.

Also recommend that the Respondent be required to recognize and bargain with the Union and, if agreement is reached, to reduce the agreement to a written contract. In ad-

<sup>5</sup> Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

dition, Respondent shall be ordered to cancel, on request by the Union, changes in rates of pay and benefits unilaterally effectuated and to make the employees whole by remitting all wages and benefits that would have been paid absent such changes until the Respondent negotiates in good faith with the Union to agreement or to impasse. The Order contains a broad cease-and-desist provision because the Respondent's conduct demonstrates a general disregard for the employees' fundamental statutory rights, however, in view of the Respondent's posthearing conduct and the representation that Respondent has recognized and participated in collective bargaining with the Union subsequent to the noted Order of a district court, I am not persuaded that it is shown that the likelihood of difficulty in achieving compliance would justify inclusion of a visitatorial clause as requested by the General Counsel.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>6</sup>

#### ORDER

The Respondent, El Mundo Corporation, Hato Rey, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating job applicants about union sympathies.

(b) Discharging any employee for activity protected by Section 7 of the Act.

(c) Refusing to recognize and bargain collectively with Union de Periodistas y Artes Graficas y Ramas Anexas de Puerto Rico, Local 225, a/w The Newspaper Guild, AFL-CIO, CLC, as the exclusive collective-bargaining representative of its employees, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment in the following appropriate unit:

All employees employed in the Administration, Maintenance, Editorial, Production and Circulation Departments.

*Excluded:* Publisher and Secretary, Executive Vice-president and General Manager and Secretary, Administrative Assistants to the Executive Vice President and General Manager, Director of Management and Information Center, Assistant General Manager, Industrial Relations and Personnel Director and Secretary, Assistant to the Industrial Relations and Personnel Director, Recruiting Officer, Treasurer and Comptroller and Secretary, Assistant Comptroller, Internal Auditor's Supervisor, Credit Manager, Accounting Supervisor, Accounting Office Manager, EDP Manager, Assistant EDP Manager, Promotion Department Manager, Advertising Director, Advertising Manager-Sales, Advertising Manager-Operations, Advertising Office Manager, Advertising Agency Coordinators, Special Commercial Supplements Manager, Public Relations Director, Art Director, Security Officer, Security Supervisors, Maintenance Director, Assistant Maintenance Director, Conservation Supervisor, Janitor Supervisor, Electric Engineer Supervisor, Mechanical Engineer Supervisor, Ex-

ecutive Editor and Secretary, Managing Editors, Assistant Managing Editors, City Editor, News Editor, Editorial Page Editor, Associate Editor, Production Managers, Assistant Production Manager, Press Foreman, Mailroom Foreman, Production Supervisors, Photoengraving Supervisor, Circulation Director and Secretary, Metropolitan Circulation Manager, Newspaper-in-the-School Manager, Circulation Office Manager, Transportation and Street Sales Manager, Assistant Transportation and Street Sales Manager, Home Delivery Manager, Assistant Home Delivery Manager, Metro Regional Manager, Island Circulation Manager, Island Manager, Island Regional Managers, Mechanics Supervisor, guards and supervisors as defined in the Act.

(d) Refusing to honor the terms of its predecessor's agreement between the Union and changing any term or condition of employment of its employees in the above unit, including wages and benefits, without first giving the Union a chance to bargain over such change.

(e) Withholding offers from, failing to hire, or otherwise discriminating against employees because they were employees of its predecessor or were members or supporters of the Union to avoid having to recognize and bargain with the Union or any other labor organization.

(f) Telling union-represented employees of a predecessor employer that its practice was not to hire or to restrict its hiring of them.

(g) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Roberto Jusino immediate and full reinstatement and make him whole for the losses he incurred as a result of the discrimination against him in the manner specified in the section above entitled "The Remedy" and remove from its files any reference to his discharge, and notify him in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel actions against him.

(b) Recognize and, on request, bargain collectively with the Union as the exclusive collective-bargaining representative of the employees described in paragraph 1(c) above, and, if an agreement is reached, embody that agreement in an executed written contract.

(c) On request of the Union, cancel any departures from terms and conditions of employment that existed immediately before its purchase of El Mundo, Inc., retroactively restoring preexisting terms and conditions of employment, including wages and benefits that would have been paid absent such departures until it negotiates in good faith with the Union to agreement or to impasse as specified in the section above entitled "the Remedy" and rescind its unilateral subcontracting of unit work in the circulation department including reinstatement of the work previously performed at El Mundo, Inc. by the district managers, district managers leadpersons, collectors, district coordinators, prepaid subscription clerk, newspaper distribution schedule clerk, and complaint mail subscription clerk.

(d) Offer all former El Mundo, Inc. employees listed in the attachment to the appendix employment in the positions who

<sup>6</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

would have been hired but for the Respondent's unlawful discrimination; employment in the positions for which they would have been hired or, if those positions no longer exist, to substantially equivalent positions, dismissing, if necessary, any persons who were not former El Mundo, Inc. employees who were hired to fill such positions, in the manner otherwise specified in the section above entitled "The Remedy."

(e) Make those applicants the Respondent would have hired but for its unlawful discrimination whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in "the Remedy."

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all records, reports, and other documents necessary to analyze Respondent's compliance with the employment offer provisions and the amount of backpay due under the terms of this decision.

(g) Post at its Hato Rey, Puerto Rico, facility, copies of the attached Notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by Respondent both in English and in Spanish immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>7</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate job applicants about their union sympathies.

WE WILL NOT discharge any employee for activity protected by Section 7 of the Act.

WE WILL NOT refuse to recognize and bargain collectively with Union de Periodistas y Artes Graficas y Ramas Anexas de Puerto Rico, Local 225, a/w The Newspaper Guild, AFL-CIO, CLC, as the exclusive collective-bargaining representative of our employees with respect to rates of pay, wages,

hours of employment, and other terms and conditions of employment.

WE WILL NOT refuse to honor the terms of our predecessor's agreement between the Union, or change any term or condition of employment of our employees in the above unit, including wages and benefits, without first giving the Union a chance to bargain over such change.

WE WILL NOT withhold offers from, fail to hire, or otherwise discriminate against employees because they were employees of our predecessor or were members or supporters of the Union to avoid having to recognize and bargain with the Union or any other labor organization.

WE WILL NOT tell union-represented employees of our predecessor employer that our practice is to not hire or to restrict our hiring of them.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer Roberto Jusino immediate and full reinstatement and make him whole for the losses he incurred as a result of our discrimination against him in the manner specified in the section of this decision entitled "The Remedy," and WE WILL remove from our files any reference to the discharge of Jusino, and notify him in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel actions against him.

WE WILL, on request of the Union, cancel any departures from terms and conditions of employment that existed immediately before our purchase of El Mundo, Inc.

WE WILL retroactively restore preexisting terms and conditions of employment, including wages and benefits that would have been paid absent such departures until we negotiate in good faith with the Union to agreement or to impasse as specified in the section of this decision entitled "The Remedy" and rescind our unilateral subcontracting of unit work in the circulation department including reinstatement of the work previously performed at El Mundo, Inc. by the district managers, district managers leadpersons, collectors, district coordinators, prepaid subscription clerk, newspaper distribution schedule clerk, and complaint mail subscription clerk.

WE WILL offer all former El Mundo, Inc. employees listed in the attachment hereto employment in the position who would have been hired but for our unlawful discrimination; employing them in the positions for which they would have been hired or, if those positions no longer exist, to substantially equivalent positions, dismissing, if necessary, any persons who were not former El Mundo, Inc. employees, who were hired to fill such positions as specified in the section of this decision entitled "The Remedy."

WE WILL make whole those applicants for which we unlawfully discriminated against, for any loss of earnings and other benefits suffered.

EL MUNDO CORPORATION